

# Penalising the Victim

**PCHR**  
المركز الفلسطيني  
لحقوق الإنسان







# Introduction

The Israeli legislature and judiciary, through legislative amendments and recent decisions, have imposed various legal and procedural obstacles for the achievement of justice for victims. Significantly, these decisions result in a situation whereby victims are financially penalised for having pursued their legitimate right to access to justice by filing civil cases before the courts. This leads to the denial of individual victims' legitimate right to an effective remedy, as well as the loss of considerable sums of money. As will be outlined in this report, such practices violate Israel's obligations under customary international law. The State of Israel's unwillingness to compensate Palestinian victims and make reparations for losses resulting from its military operations in the Gaza Strip is reflected in the treatment and outcomes of civil cases filed before Israeli courts to seek compensation on behalf of the victims.

To illustrate these issues, this report will focus on the steps taken by the Palestinian Centre for Human Rights (PCHR) to seek reparations on behalf of the victims of 'Operation Cast Lead', the 2008-2009 Israeli offensive on the Gaza Strip. PCHR filed 1,046 civil complaints (or "damage applications"), on behalf of 1,046 victims, to the Compensation Officer in the Israeli Ministry of Defence. These damage applications sought compensation for victims following alleged violations of international law committed by

Israeli forces. Because the Israeli authorities did not act upon these damage applications, between June 2010 and January 2011, PCHR filed 100 civil cases before Israeli courts, seeking compensation for 620 victims. Through these compensation cases, PCHR endeavours to ensure adherence to the principles of international law (as presented below), which recognise the State of Israel's obligation to provide reparations to Palestinian victims, as well as the victims' right to claim such reparation from the State.

PCHR's experience indicates that the Israeli judicial system is being used to provide an illusion of justice, while systematically denying Palestinian civilians their right to an effective remedy through various measures. To elaborate on PCHR's experiences, this part of the report will: (a) identify the relevant international legal principles and standards; (b) explain the relevant Israeli mechanisms; and (c) outline the Israeli courts' recent treatment of cases and their outcomes.

# Reparations under international law

## Israel's obligation to provide reparations to the victims of its violations

International law firmly establishes that a State is liable to make reparations for breaching or violating international legal principles.<sup>1</sup> The core idea behind reparations is that the violator must, "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."<sup>2</sup> Importantly, reparations can take various forms, depending upon the violation and its effects, including restitution, compensation, satisfaction, and non-repetition. International humanitarian law specifically provides that: 'A Party to the conflict which violates the provisions of the [Geneva] Conventions or of [its] Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.'<sup>3</sup> This principle has been acknowledged as a norm of customary international law.<sup>4</sup> The 1949 Fourth Geneva Convention confirms that a State cannot be absolved of its liability in respect of grave breaches of international humanitarian law.<sup>5</sup> In accordance with the principles outlined above, any actions of the State of Israel which constitute violations of international law will trigger its responsibility and obligation to provide reparations to the victims.

1

"It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation [...] Reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself." - Case concerning the Factory at Chorzow (Germany. v. Poland.), 1927 P.C.I.J. (ser. A) No. 9 (July 26); See also, Article 1 of the Articles on State Responsibility adopted by the International Law Commission in 2001, "Every internationally wrongful act of a state entails the international responsibility of that State". (UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001)

2

Case concerning the Factory at Chorzow, at p. 47.

3

Article 91, Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

4

See, Rule 150, Chapter 42, 'Responsibility and Reparation', in International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press, Cambridge, 2005.

5

Article 148, Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

## Palestinian victims' right to reparations

In 2004, the International Court of Justice applied the above principles to the concept of "individual reparations" in the context of Israel's illegal construction of the annexation wall in the West Bank. The court held that Israel has to "make reparation for the damage caused to all the natural or legal persons concerned."<sup>6</sup> Importantly, an individual's right to an effective remedy is enshrined under various international human rights law instruments, most relevantly the ICCPR, which states that "any person whose rights or freedoms as herein recognised are violated shall have **an effective remedy**".<sup>7</sup> The UN Human Rights Committee has noted that, "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged."<sup>8</sup> The International Criminal Court too, in principle, provides for the right to reparations for victims in its Statute.<sup>9</sup> Significantly, in a 2006 resolution,<sup>10</sup> the UN General Assembly acknowledged that, "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to [...] [a] dequate, effective and prompt reparation for harm suffered."<sup>11</sup>

It is clear that Palestinian victims have a right to claim reparations from Israel for damages caused to them as a result of violations of international humanitarian law and international human rights law. According to the UN General Assembly, the right to an effective remedy is not limited to the right to claim reparations, but also includes the right to access to justice,<sup>12</sup> which comprises

<sup>6</sup>

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (Advisory Opinion), ICJ Reports 2004, at p. 198, para. 152.

<sup>7</sup>

Article 2(3)(a), ICCPR; see also Article 14, Convention Against Torture, "[...] the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

<sup>8</sup>

Human Rights Committee, 'General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant', U.N. Doc.CCPR/C/21/Rev.1/Add.13 (2004) at para 16.

<sup>9</sup>

Article 68 and Article 75, of the Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6. With the advancement in victims' participation at international criminal tribunals provided by Article 68, and the extensive nature of the Article 75 (Reparations to victims), it is contended that the ICC presents an opportunity for victims to claim reparations, provided the alleged violation falls within the ICC's jurisdiction.

<sup>10</sup>

"Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law." A/RES/60/147, 21 March 2006.

<sup>11</sup>

Basic Principles, Paragraph 11.

<sup>12</sup>

Basic Principles, Paragraph 12.

the following relevant principles:

- The State is obliged to take measures to minimise the inconvenience to victims and their representatives, before, during and after the judicial, administrative, or other proceedings;
- The State should provide proper assistance to victims seeking access to justice; and
- The State should make available all appropriate legal, diplomatic, and consular means to ensure that victims can exercise their right to remedy for gross violations of international human rights law and international humanitarian law.<sup>13</sup>

# PCHR's pursuit of reparations for Palestinian victims

## Israeli mechanisms and obstacles

The normal procedure for seeking reparations on behalf of victims of international law violations perpetrated by the Israeli military in the occupied Palestinian territory (and specifically in the Gaza Strip) is a two-stage process. First, and within 60 days of the incident, a complaint is submitted to the Compensation Officer in the Israeli Ministry of Defence. If no proceedings are initiated, a case may then be submitted before the Israeli civil courts; this must be done within two years of the incident.<sup>14</sup>

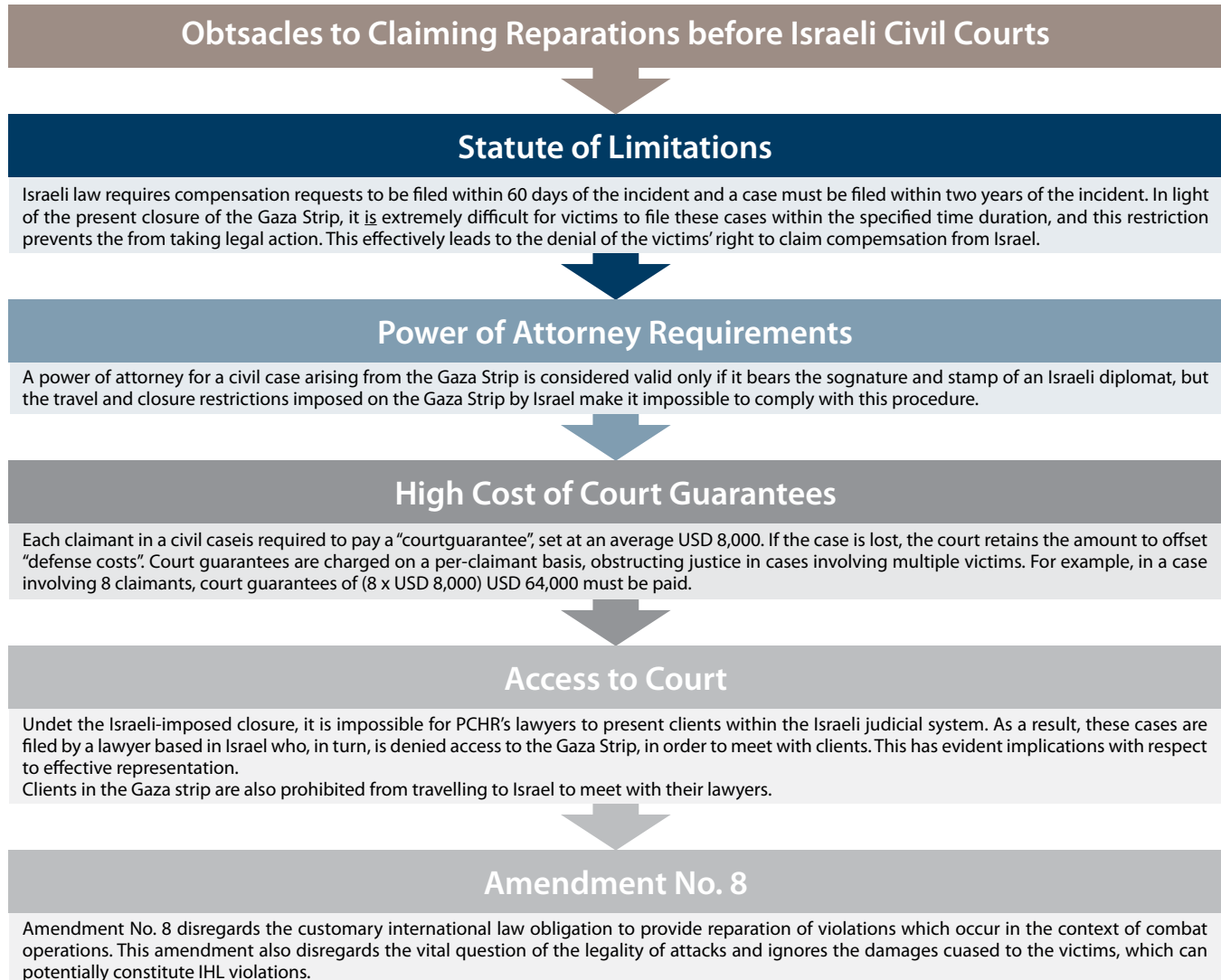
Compensation cases must be submitted to the Israeli civil courts in accordance with the procedures laid down in the Tort Law of Civil Damages (Liabilities), 1952. In PCHR's experience, these claims are subject to numerous restrictions and obstacles, which act as barriers to justice and effectively prevent most victims from pursuing their right to reparation. These obstacles fall into different categories, and are financial, legislative, and procedural in nature. As a result, Palestinian victims of international humanitarian law and international human rights law violations are effectively prevented from seeking reparation and compensation for the damages and losses sustained as a consequence of violations of international law committed by Israeli military forces.

14

Article 5 (a) of the Civil Torts Law (State's Liability) of 1952



The following diagram summarises the obstacles hindering cases from the Gaza Strip:



## Obstacles to claiming reparations before Israeli civil courts

### 1. Statute of limitations

Prior to 1 August 2002, claimants had a period of seven years after an incident, in which to file a compensation case before the Israeli courts. After 1 August 2002, this time limit, or statute of limitations, was dramatically reduced to two years. In respect of incidents occurring after 1 August 2002, the general rule is that the statute of limitations is 2 years from the date of the incident.<sup>15</sup>

Since 15 April 2003, written notifications must be submitted within 60 days of the date of the incident. There exist a few limited exceptions to the 60-day limit:

- In cases where there is a circumstance hindering the submission of a notification within 60 days, the notification must be submitted within 30 days of the day on which the circumstance in question was resolved. The circumstance may include travel, sickness, etc.
- If the claimant dies during the 60-day period, his/her heirs can submit the notification within 60 days of the day of his/her death.
- If the notification has been submitted to the Israeli Ministry of Defence, and the latter asks for more details, the claimant must submit details within 45 days of the date of the request.

<sup>15</sup>

The court may renew the period for another year if it is convinced that there were emergency circumstances that obstructed the lodging of a claim in due time and, in the case of minors, the court may renew the prescriptive period for an additional 3 years.

The written notification is a precondition for lodging a case before the court; however, if the Israeli Ministry of Defence does not respond to the notification, it shall not mean that there is no need to refer to the court. On 3 March 2003, the Israeli Ministry of Defence issued a format for written notifications, which must be used when submitting notifications, as detailed in the legislative amendments. Notifications which are not in this format will not be accepted.

In light of the present closure of the Gaza Strip, it is extremely difficult for victims to file these notifications within the specified time duration, and this restriction prevents them from taking legal action. This effectively leads to the denial of the victims' right to claim compensation from Israel.

## **2. Power of attorney requirements**

According to requirements introduced in December 2012, by order of an Israeli court,<sup>16</sup> a power of attorney (or any other document) for a civil case arising from the Gaza Strip is considered valid only if the signature of an Israeli diplomatic representative or consul appears on the back of the document or attached to it. Compliance with this procedure is not possible because claimants from the Gaza Strip are generally prevented from travelling to Israel, and Israel does not provide any consular or diplomatic services to residents within the Gaza Strip.

In a recently-dismissed case, when counsel for the victims

**16**

Order of the Be'er Sheva Central Court on 31 December 2012, in Case No. 7865/01/11.

explained that compliance with this procedure is not possible, the court replied that it was not clear whether counsel had applied to the concerned authorities, and suggested that it is possible for claimants to go to Egypt to obtain the required signature from an Israeli diplomat.<sup>17</sup>

### 3. High cost of court guarantees

Before a civil case can proceed, each claimant is required to pay a 'court guarantee';<sup>18</sup> if the case is lost, the court retains the entire guarantee to offset the costs of the State's defence. In PCHR's experience, court guarantees are set at an average of NIS 30,000 (USD 8,000). Guarantees were previously imposed on a per-case basis. However, in June 2011, the Israeli Central Court in Nazareth issued a decision requiring each claimant to pay a guarantee. This per-claimant expense results in increased barriers to justice in cases involving multiple victims. For example, the case of the Samouni family involved 62 victims, which would have required PCHR to pay a total of NIS 1,860,000 (USD 500,000), a sum that is prohibitively high, in light of the difficult socio-economic situation in the Gaza Strip.<sup>19</sup>

The high cost of court guarantees has severely restricted PCHR's ability to pursue reparations on behalf of victims. To date, PCHR has paid court guarantees amounting to NIS 918,736 (approximately USD 247,000). The Israeli courts dismissed 43 of the 100 civil cases mentioned above, as PCHR was unable to raise sufficient funds to pay the guarantees on behalf of all of the victims.

17

Order of the Be'er Sheva Central Court on 14 February 2013 in Case no. 15084/03/11. (Annexure: Power of Attorney); It should be noted that travelling to Egypt is very expensive, and many Palestinians are also denied entry to Egypt or lack the requisite travel documents.

18

Regulation 519 of the 1984 Civil Procedure Regulations, entitles the court to order the plaintiff to deposit a guarantee to offset defence costs.

19

See PCHR Press release, 'Israel's Disgraceful Decision to Close Samouni Case Makes Mockery of Victims' Rights and International Law', Ref: 51/2012, 2 May 2012, available at: <http://tinyurl.com/ckt35gh>.

#### 4. Access to courts

In a decision taken on 19 September 2007, Israel's Security Cabinet declared the Gaza Strip to be a "hostile entity".<sup>20</sup> Since then, Israel has tightened the closure of the Gaza Strip. As a part of the closure, movement of people to and from the Gaza Strip has been restricted. Only certain goods and materials, as determined by the Israeli security services to be necessary to prevent a humanitarian crisis, are allowed to enter the Gaza Strip. Israeli citizens are denied access to the Gaza Strip.

As a result of these restrictions, people living in the Gaza Strip cannot meet with their Israeli lawyers and cannot attend Israeli courts sessions considering claims filed by them. Therefore, Israeli lawyers cannot effectively represent people from the Gaza Strip as they are denied the basic conditions for appropriate representation. They cannot have an effective relationship with their clients, they cannot meet with them, they cannot have their client's signature on documents, they cannot provide advice to their clients face-to-face, they cannot have access to the scene of the incident and collect evidence, and they cannot meet with eyewitnesses and experts in the Gaza Strip. In addition, residents of the Gaza Strip are generally not permitted to enter Israel, even for the purpose of providing testimonies as a part of legal procedures.

The closure of the Gaza Strip prevents any possibility to manage any serious legal action in Israel, especially in view of the Israeli lawyers' inability to sincerely represent their Palestinian clients

<sup>20</sup>

Israeli Ministry of Foreign Affairs, "Israel's Security Cabinet declares Gaza hostile territory," 19 September 2007.

and in view of restrictions imposed on the movement of claimants and eyewitnesses to Israel to file cases and to testify.

## 5. Amendment No. 8

- Amendment No. 8 to the Israeli Civil Tort Law (Liability of the State)<sup>21</sup> exempts the State of Israel of any liability arising from damages caused to a resident of an enemy territory during a “combat action”.<sup>22</sup> This amendment widens the scope of a combat action to any operations carried out by Israeli forces, which by their nature, were in response to terrorism, hostilities, or insurrections. Qualification of a military operation as a combat action is dependent upon the overall circumstances, including the goal of the action, the geographic location, and the inherent threat to members of the Israeli forces who are involved in carrying out the action.
- Amendment No. 8 disregards the obligation under customary international law to provide reparations for violations, which occur in the context of combat operations. The amendment also disregards the fundamental question of the legality of the attacks and ignores the damages caused to the victims, which can potentially constitute violations of international humanitarian law. By doing so, this amendment directly contravenes norms of customary international law, which establish that a State is responsible for all acts committed by persons who are operating as part of its armed forces, and must provide reparation in the event of a violation.<sup>23</sup> The Be’er Sheva court’s disregard for these

<sup>21</sup>

On 16 July 2012, the Israeli Knesset accepted the Law and Explanatory Matters Bill, which was published in the Government Act Bill – 387 in May 2008, page 598. (Hereinafter: ‘Amendment No. 8’). (Annexure: Amendment No. 8).

<sup>22</sup>

Since 2005, the Gaza Strip has been classified as a ‘hostile entity’. Israeli Ministry of Foreign Affairs, “Israel’s Security Cabinet declares Gaza hostile territory,” 19 September 2009.

<sup>23</sup>

See, above, Reparations under international law.

international norms is reflected in its reasoning for the dismissal of one of the cases: *"Even if international law provides for the claimants to claim compensation for violations of international humanitarian law, the issue is not related to a reason for which a claim can be filed within a civil procedure."*<sup>24</sup>

### **The retroactive nature of Amendment No. 8**

Amendment No. 8 applies retroactively from the year 2000 onwards and, with respect to the Gaza Strip, from 2005 onwards. As a result, the court can dismiss any civil cases which were brought before it after 2000 and 2005 respectively, on the basis that such incidents fall under the new definition of "combat action". PCHR is seriously concerned by the retroactive nature of Amendment No. 8; this undermines years of effort invested by various civil society organisations in pursuing civil cases, and may also result in the loss of vast amounts of money which were paid in court guarantees. As noted below, a number of recent cases have been closed on this basis, and the court guarantees have not been returned to the victims.

### **Outcomes of recent compensation cases filed by PCHR**

Following 'Operation Cast Lead', PCHR submitted **1,046 damage applications for reparations on behalf of 1,046 victims** to the Compensation Officer in the Israeli Ministry of Defence. These damage applications sought compensation for victims following alleged violations of international law committed by Israeli forces.

<sup>24</sup>

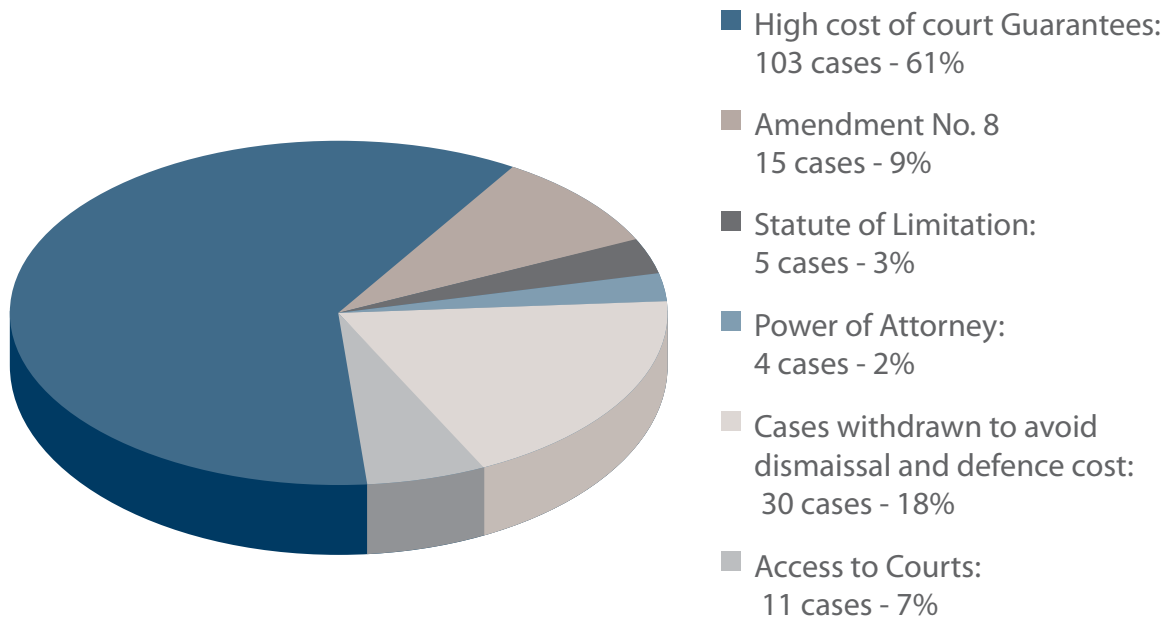
Annexure: Order of the Be'er Sheva Central Court on 14 February 2013 in Case no. 7458/01/11.

However, PCHR has, to date, received only 22 responses in relation to 37 victims from the Ministry. Most of these responses are a simple notification that the Ministry has received the application and PCHR will be contacted when a decision has been reached. It should be noted that PCHR lawyers regularly send letters to the Ministry requesting information on applications, but they rarely receive a response.

Because the Israeli authorities did not act upon these damage applications, between June 2010 and January 2011, PCHR filed 100 civil cases before Israeli courts, seeking compensation for 620 victims. These 100 cases increased the total number of compensation cases filed by PCHR to date to 223 cases on behalf of 930 victims. Of these 223 cases, only 13 cases (representing 14 victims) have been successful in obtaining compensation. 3 of those cases related to 'Operation Cast Lead'. Many more of PCHR's cases have been unsuccessful in obtaining reparations for the victims due the above-mentioned obstacles. Of the 223 cases, a total of 138 have been dismissed for the following reasons: 103 cases (representing 728 victims) were dismissed because of the high cost of court guarantees; 4 cases (representing 5 victims) were dismissed because the power of attorney did not bear the stamp and signature of an Israeli diplomat; 11 cases (representing 26 victims) were dismissed because the victims and eyewitnesses could not testify before the courts as they were not allowed to enter Israel; 5 cases (representing 30 victims) were dismissed due to the restrictive statute of limitations; and 15 cases (representing 198 victims) were dismissed due to the changes brought in



by Amendment No. 8. In light of this, PCHR took the decision to withdraw 30 additional cases (representing 82 victims), as proceeding with the cases would have resulted in their inevitable dismissal and the loss of the court guarantees, which would have been claimed by the court as “defence costs”. PCHR has another 42 cases (representing 106 victims) pending before the Israeli courts.



Dismissed/withdrawn civil compensation cases filed by PCHR  
from 1 January 1999 to 25 March 2013

## Additional information

On 21 December 2010, PCHR and the Israel-based attorney, Michael Sfard, filed a petition before the Israeli High Court of Justice. The petition, directed to the Legal Advisor of the Israeli government and the State Prosecutor, requests the suspension of the statute of limitations (normally 2 years) with respect to all cases arising from 'Operation Cast Lead', through the issuance of a preliminary order. The suspension of the statute of limitations is requested, in order to ensure that victims from the Gaza Strip are not denied the right to an effective remedy (as a result of, *inter alia*, the Israeli-imposed closure of the Gaza Strip). It was asked that the petition be dealt with urgently (i.e. before the expiration of the statute of limitations on 27 December 2010). On 22 December 2010, the Israeli Supreme Court decided the following:

- i. The Legal Advisor to the Israeli government and the State Prosecutor were required to respond to the petition by 17 March 2011; and
- ii. There was no reason to urgently consider the petition before 27 December 2010.

The court also expressed doubts about the petition, wondering whether it justified the court's intervention.

This petition is still before the court. On 29 January 2013, the court ordered the defence, the Israeli Attorney General, to submit

an instructional paper on the issue of the statute of limitations and the issue of restrictions affecting victims and eyewitnesses from appearing before Israeli courts.<sup>25</sup> Once this paper has been submitted, PCHR can file a rebuttal within two weeks and, eventually, the court will take a decision.

**25**

Annexure: PCHR v. Attorney General of Israel, Supreme Court of Israel, Petition No. 10/9408, Order dated: 29 January 2013.



## Conclusion

It is clear that the Israeli legislative and judicial mechanisms deprive victims from the Gaza Strip of their right to seek reparations from the Israeli courts by placing financial, judicial, and procedural obstacles in their path. These obstacles contravene international standards, including the UNGA principles on reparations for victims of violations of international humanitarian and human rights law. Such measures clearly indicate Israel's unwillingness to fulfil its legal obligations towards the victims of its military operations through its domestic mechanisms. In effect, PCHR believes that the Israeli judicial system is being used to provide an illusion of justice, while systematically denying Palestinian civilians their right to an effective remedy.



## Annex-1

### Beersheba District Court

### The heirs of al-Maqadma

### Judgment

In the decision of 15 January 201, we a received a request from the defendant to obligate Attorney Tamim Younis to send the power of attorneys authenticated in accordance with the law in 14 days; otherwise, the claim would be dismissed.

It was decided that it is not sufficient to provide the document titled "Power of Attorney," which was apparently signed before Mr. Iyad al-Alami, Director of the Legal Department in the Palestinian Centre for Human Rights in Gaza.

The power of attorney referred to in the decision has not been sent so far. In its reply to Attorney Tamim's response to the decision, the defendant reiterated its demand to dismiss the claim because the required power of attorney has not been sent.

It is similar to the reasoning of this court's decisions in Claim No. 11716-01-11 – the heirs of Aamer Ba'lousha vs. the State of Israel. I believe that the reasons provided in that decision make its

necessary to accept the defendant's demand in this claim also. In that claim, it was decided that...

A power of attorney or any other document written or issued in any place beyond the areas where the laws of the State of Israel are applicable in any court or civil claim must be certified by the bodies that have issued it or provided it before one of the following:

1. An Israeli diplomatic representative or consul, whose signature appears on the back of the document or attached to it.
2. A notary public, whose signature and stamp must appear on the document, which must be presented to an Israeli diplomatic representative or consul, whose signature and stamp must be placed on the document or attached to it.

The attached document does not constitute a power of attorney according to the law, and it is not convincing with regard to the claimants' representation by Tamim Younis.

In his reply, the attorney claimed that it is not possible to obtain the power of attorney as required because the State prevents Israelis from entering Gaza, and prevents the residents of Gaza from entering Israel.

It is not clear from the reply whether the attorney applied to concerned authorities to allow the claimants to enter Israel or coordinate a meeting with them at a border crossing (such as Erez crossing). Additionally, it is possible for the claimants to sign the

power of attorney bore an Israeli diplomatic representative or consul in another country, including Egypt.

Therefore, the claim is dismissed.

Under the circumstances of the claim, before an insurance fee is paid, there will be no decision concerning the expenses.

As indicated in the above decision, it is apparent that in order to prevent similar difficulties in the future, the possibility, according to considerations, to allow meetings between the claimants from Gaza and lawyers at a border crossing between the Gaza Strip and Israel or any other place controlled by the security forces should be considered.

A copy of this judgment should be sent by the attorney to concerned authorities to check the possibility of permitting the above procedure.

Issued on 14 February 2013 in the absence of the parties,

**Judge**

## Annex-2

### Tort Law (Liability of state) (8<sup>th</sup> Amendment) of 2012<sup>26</sup>

#### Amendment of Article 1

1. The definition of the term “military operation” in the 1952<sup>27</sup> Tort law (Liability of State), required that such operations exist in a context where there is imminent danger on the life of the Israeli forces’ troop; however, the new definition requires such operation to be as such in terms of their nature including the purpose, Location, or the danger on the force as a result of conducting the operation.

#### Amendment of Article 5

In Paragraph 5 (B) of the original law:  
The state is able to invoke the no-liability defense when damages occur as a result of a military operation. Courts should now consider this argument and have the power to dismiss cases on this preliminary ground, even without hearing witnesses or considering evidence.

<sup>26</sup>

on 16 July 2012, the Israeli Knesset accepted the law and Explanatory Matters bill, which was published in the Government Act bill - 387 on May 2008, page 598.

<sup>27</sup>

2008 Government Act bill, p. 339; 2005, p953.



Amendment of paragraph 5 (B)	Non-residents of Israel or residents of "enemy entitis" for damages caused by Israeli forces` operations.
Amendment of paragraph 5(B-1)	Only courts in the areas of Beersheba and Jerusalem can look into cases submilted by Palestinians.
Abolishment of Paragraph 5 (C)	Paragraph 5 (C) of the original law, was abolished.
Amendment of paragraph 5 (D)	1. In the first Annex, " Addition" is replaced with" 1 <sup>st</sup> addition. 2. The second addition and text are deleted.
Amendment No. 9 (A)	In paragraph 9 (A) of the original law , paragraphs 5 (B) and (C) are replaced by paragraph 5 (B)
Abolishment	The second addition of the original law is abolishd.

## The Second Addition Validty

1. Provisions of paragraph 5 (B-1) of the original law as stated in article 3 of the same law , apply retroactively and can be applied to all cases from 12 May 2005.

2. Provisions of article 5 and 5 (B-1) of the original law, as stated in articles 2 and 4 of this law, apply to pending cases within the Israeli judicial system: these cases must be transfered to concerned courts, according to article 5(B-1).

In terms of cases presented to the District court, or those assigned by the President of the District Court in certain governorates, in relation to testimony evidence - eyewitnesses appear before the court for their testimonies to be heard.

Benjamin Netanyahu  
prime Minister  
Shimon Peres  
President of Israeli

Jacob Naman  
Israeli Minister of Justice  
Reuven Rivlin  
Speaker of the Knesset

## Annex-3

### Central Court of Beersheba

**Claimants: The heirs of Arafah Abdul Dayem**

**Defendants: The State of Israel – Defense Ministry**

#### Judgment

1. I have before me a claim for torts caused to the claimants as a result of a military operation carried out by the defendants.
2. Without relevance to the circumstances and results of the incidents, I would like to express my deep sorrow and regret for this horrible loss.
7. The above circumstances in their context cannot be linked with a police operation, training or administrative action – it is only a military operation.
8. Therefore, Article 5(a) of the Tort Law is applicable to this subject, under which the State is not responsible for damage resulting from an IDF military operation.
9. Even if there is a justification for the claimants to claim for compensation for violating the laws of war according to the international law, the issue is not related to a reason for which a claim can be filed within a civil procedure like our case (Claim No. 3675/2009, State of Israel vs. David, 11 August 2011, § 15).
16. Based on the reasons on which I have depended in my above

decision Swaidi Ghaboun, I believe that I should not deviate from the rule, according to which when a claim is dismissed, the claimant is bound to pay the expenses regardless of the hard result and the deep sadness.

17. The claimants shall pay to the defendants 20,000 NIS as defense costs, given that the claim has been dismissed before the evidence laws being applied to it. The defendants are entitled to recover this amount from the insurance fee if it is higher than the amount, the remaining amount shall be returned to the depositors through the claimants' attorney.

Issued on 14 February 2013, in the absence of parties,

**Shlomo Fred Linder – Judge**



## Annex-4

**Supreme Court of Israel**

**Petition 10/9408**

**Before:** Honourable Judge E. Rubinstein  
Honourable Judge Y. Danziger  
Honourable Judge Daphne Barak-Erez

**Petitioner: Palestinian Centre for Human Rights (PCHR)**

**Respondents: 1. Attorney General of Israel  
2. State Prosecution**

**Petition for a Preliminary Order**

**Court hearing date: 29 January 2013**

**On behalf of the petitioner:** Advocate Michael Sfard;  
Advocate Emily Schiffer;  
Advocate Michael Braunstein;  
Advocate Hilla Grouney

### **Judgment**

By reviewing the State's complementary notification and response, we advised the respondents' representatives on the topics of the

statement of the petition, such as the entry to Israel from Gaza to parties of civil complaints and litigation matters, for example holding video-conferences; receiving affidavits and coordinated delays in certain cases, etc; this shall be expressed through the Attorney general's directions. We believe that the State's position on principal issues raised in various files shall be – in this manner – expressed correctly. It should be mentioned that it is clear for us that the security dimension is a key element and must be taken into consideration; however, under this complex framework we, undoubtedly, want to ensure justice in the judiciary as much as possible. Therefore, we advise that the matter be taken into consideration and in the case of reaching an agreement, an instructions paper shall be presented for our consideration within 4 months.

Afterwards, the petitioners may file within two weeks, and eventually, a decision shall be made to complete the legal procedures.

Issued on 29 January 2013

The Supreme Court of Israel